

personal physician, William C. Simon, D.O., on February 3, 1998, and again on February 5, 1998. The records produced from Dr. Simon's office include a typed history of claimant's treatment with the doctor's office. The restriction sheets of February 3, 1998, and February 5, 1998, do not mention the injury with respondent as being work-related. They do show lumbar strain and the fact that claimant was on restricted duty for a period of time, but there is no indication that claimant's symptoms originated from any work-related injury. The entry on the February 9, 1998, return to work form shows a non-occupational injury.

Ms. Black, claimant's supervisor, testified that she did not recall claimant ever advising her of any work-related accident. It is Ms. Black's responsibility to fill out an accident report any time she is advised of an injury. She reviewed her records and found no accident report prepared for claimant.

It was acknowledged that carrying buckets of water on a regular basis was part of claimant's job responsibility. The medical records also verify that claimant suffered a lumbar strain shortly after February 2, 1998.

In proceedings under the Workers Compensation Act, the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which this right depends by a preponderance of the credible evidence. See K.S.A. 1997 Supp. 44-508(g) and K.S.A. 1996 Supp. 44-501.

The Appeals Board has, in the past, given some deference to the administrative law judge's conclusions regarding witness credibility when dealing with testimony presented live before the administrative law judge. In this instance, both claimant and Ms. Black testified at the preliminary hearing before the Administrative Law Judge. The Administrative Law Judge found that claimant had proven accidental injury arising out of and in the course of her employment. It is documented in the medical record that claimant had a lumbar strain at approximately the same time as the alleged injury. In addition, as there were no witnesses to this incident, claimant's is the only testimony regarding how this incident may or may not have occurred. The Appeals Board, therefore, affirms the finding by the Administrative Law Judge that claimant proved accidental injury arising out of and in the course of her employment.

K.S.A. 44-520 places a strict requirement on the employee to notify the employer of a work-related accident within ten days. Claimant here alleges that she told her supervisor of the accident. However, her supervisor recalls no such notice. In addition, Ms. Black testified she would have prepared an accident report had she been notified of the incident. A review of her records failed to uncover any accident report for claimant alleging any work-related accident with respondent.

Finally, the medical records of Dr. Simon, in particular the prescription notes from E. Diane Steeves, ARNP, while indicating a lumbar strain, show no work-related connection to the condition diagnosed. The prescription notes dated February 3 and 5, 1998, were within 24 and 72 hours of claimant's alleged accidental injury. Claimant's failure to advise Ms. Steeves or Dr. Simon of the work-related accident is inconsistent with her allegation that she notified respondent of an accidental injury. It is difficult to comprehend a claimant who notifies a respondent of an accident, but fails to advise her treating physician of the circumstances surrounding her alleged injury.

The Appeals Board, therefore, finds that claimant has failed to prove that she provided notice to respondent of an accidental injury within ten days as alleged. The first notice in this instance, which can be confirmed in the record, occurred in October 1998, and fails to satisfy K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 9, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Frederick L. Haag, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director